27320

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 322.

THE UNITED STATES, APPELLANT,

vs.

THE CHOCTAW NATION AND THE CHICKASAW NATION.

No. 323.

THE CHICKASAW FREEDMEN, APPELLANTS,

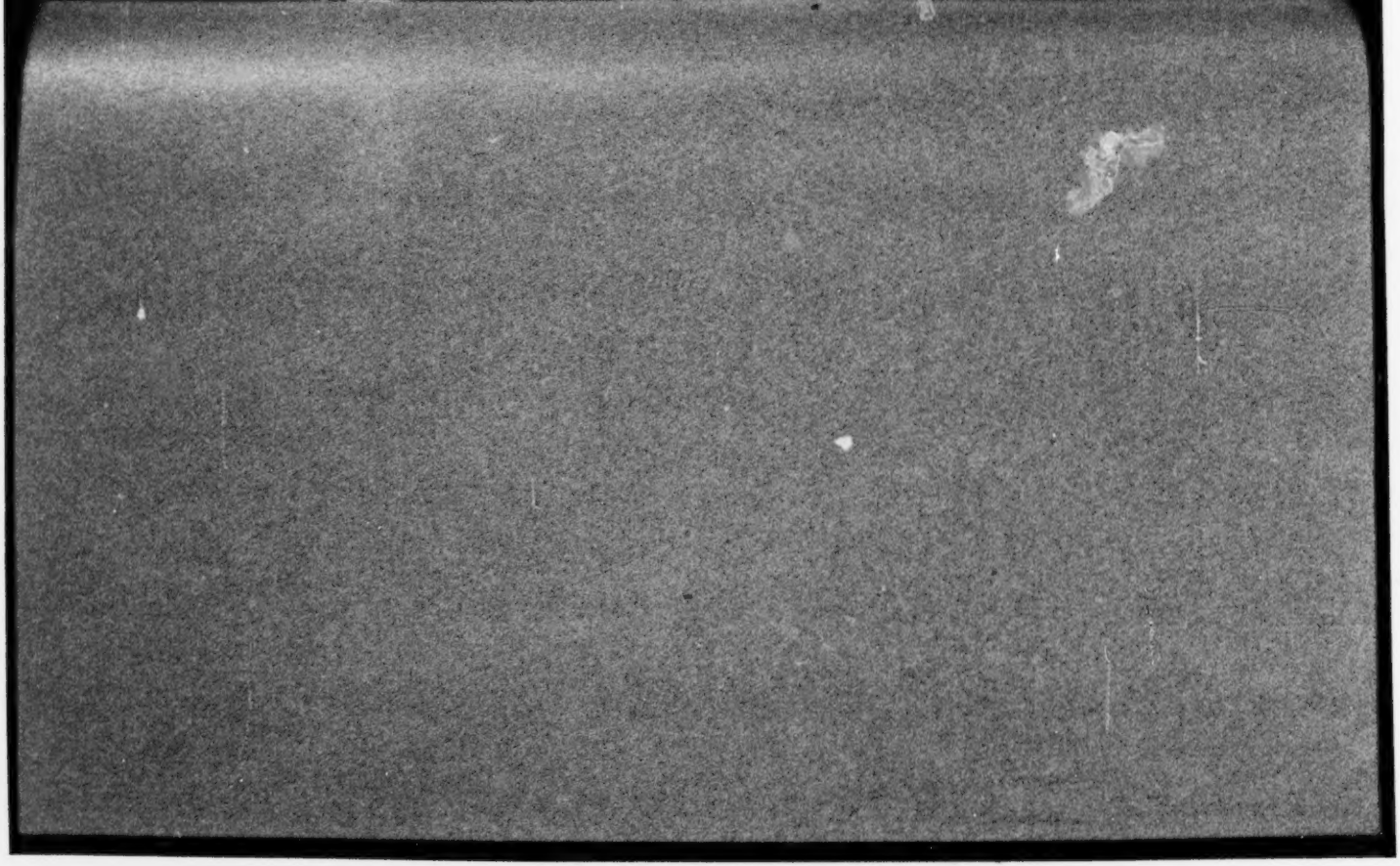
vs.

THE CHOCTAW NATION AND THE CHICKASAW NATION.

APPEALS FROM THE COURT OF CLAIMS.

FILED JUNE 11, 1903.

(18973 AND 18974.)



27321

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 322.

THE UNITED STATES, APPELLANT,

vs.

THE CHOCTAW NATION AND THE CHICKASAW NATION.

No. 323.

THE CHICKASAW FREEDMEN, APPELLANTS,

vs.

THE CHOCTAW NATION AND THE CHICKASAW NATION.

APPEALS FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Bill of interpleader	1	1
Answer of the Choctaw and Chickasaw nations	17	7
Answer of the Chickasaw Freedmen	29	14
Motion of the Choctaw and Chickasaw nations to strike out certain parts of the answer of the Chickasaw Freedmen	45	22
Opinion	47	23
Decree	54	30
Application for appeal by United States	57	31
Allowance of appeal of United States	57	31
Application for appeal by Chickasaw Freedmen	59	32
Allowance of appeal of Chickasaw Freedmen	59	32
Clerk's certificate	61	32

28036—03——1

1 In the Court of Claims of the United States.

THE UNITED STATES, COMPLAINANT,
v.
THE CHOCTAW NATION AND THE CHICKASAW NATION and the Chickasaw Freedmen, defendants. } No. 23115.

I. *Bill of interpleader.*

(Filed November 26, 1902. J. R.)

To the honorable the judges of the Court of Claims:

The Attorney-General of the United States, on behalf of the United States, respectfully showeth:

1. For a number of years prior to the year 1866 there resided within the territory of the Chickasaw Nation a number of persons of African descent who were held in slavery in said nation.

2. The treaty between the United States and the Choctaw and Chickasaw Indians, concluded April 23, 1866, and proclaimed July 10, 1866, provided inter alia as follows:

"ARTICLE II. The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude,
2 otherwise than in punishment of crime whereof the parties shall have been duly convicted, in accordance with laws applicable to all members of the particular nation, shall ever exist in said nations.

"ARTICLE III. The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98 west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent, in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all the persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to said nations, respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately upon the enactment of such laws, rules, and regulations the said sum of
3 three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one fourth to the latter, less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations, respectively. And should said laws, rules, and

regulations not be made by the legislatures of the said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said Territory in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

"ARTICLE IV. The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in
4 all civil and criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce; and they agree, on the part of their respective nations, that all laws shall be equal in their operation upon the Choctaws, Chickasaws, and negroes, and that no distinction affecting the latter shall at any time be made, and that they shall be treated with kindness and protected against injury; and they further agree that while the said freedmen, now in the Choctaw and Chickasaw nations, remain in said nations, respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupant, it being understood that in the event of the making of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in place of the land cultivated as last aforesaid."

3. The legislature of the Chickasaw Nation has taken action at various times in regard to the said Chickasaw freedmen, as follows:

On November 9, 1866, the Chickasaw legislature passed an act declaring it to be the unanimous desire of the legislature that the United States hold the share of the Chickasaw Nation in the $300,000 stipulated for the cession of the "Leased district" for the benefit of the Chicka-
5 saw freedmen and remove them beyond the limits of the Chickasaw Nation, according to the third article of the treaty of 1866.

In 1868 similar action was taken by the Chickasaw legislature asking for the removal, by the United States, of the Chickasaw freedmen from the Chickasaw country.

The law of January 10, 1873, provided as follows:

"SECTION 1. Be it enacted by the legislature of the Chickasaw Nation, That all the negroes belonging to the Chickasaws at the time of the adoption of the treaty of Fort Smith, and living in the Chickasaw Nation at the date thereof, and their descendants, are hereby declared to be adopted in conformity with the third article of the treaty of 1866, between the Choctaws, Chickasaws, and the United States: Provided, however, That the proportional part of the three hundred thousand dol-

lars, specified in the third article of the said treaty, with the accrued interest thereon, shall be paid to the Chickasaw Nation for its sole use and benefit: And provided further, The said adopted negroes of the Chickasaw Nation shall not participate in any part of the said proportional part of the said three hundred thousand dollars, nor be entitled to any benefit from the principal and interest on our invested funds or claims arising therefrom, nor to any part of our common domain, or the profits arising therefrom (except the forty acres per capita provided for in the third article of the treaty of eighteen hundred and sixty-six), nor to any privileges or rights not authorized by treaty stipulations:

6 And provided further, That the said adopted negroes, upon the approval of this act, shall be subject to the jurisdiction and laws of the Chickasaw Nation, and to trial and punishment for offenses against them in every case just as if the said negroes were Chickasaws.

"SEC. 2. And be it further enacted, That this act shall be in full force and effect from and after its approval by the proper authority of the United States; and all laws, or parts of laws, in conflict with this act are hereby repealed."

That act was submitted by the governor of the Chickasaw Nation, by letter of the same date, to the President of the United States, and was submitted by the Secretary of the Interior to the Speaker of the House of Representatives, on February 10, 1873, with recommendation for appropriate legislation for extending the time for the execution of the third article of the treaty. The papers were referred to the Committee on Freedmen Affairs, but no action thereon was had at that time. (See Annual Report Indian Office, 1882, p. 57; and H. R. Ex. Doc. 207, Forty-second Congress, third session.)

The law approved October 18 provided, inter alia, as follows:

"SECTION 1. Be it resolved by the legislature of the Chickasaw Nation, That four commissioners, one from each county of the Chickasaw Nation, shall be elected by joint vote of the senate and house of representatives of the present session of the legislature, to visit the capital of the Choctaw Nation, during the next regular session of the

7 general council of said nation, with instructions to confer with commissioners on the part of the Choctaw Nation, and agree upon some plan whereby the freedmen, former slaves of the Choctaws and Chickasaws, and their descendants, shall be removed from and kept out of the limits of the Choctaw and Chickasaw country."

The law approved October 17, 1876, or 1877, provided, inter alia, as follows:

"SEC. 3. Be it further enacted, That the provisions contained in article 3 of the said treaty, giving the Chickasaw legislature the choice of receiving and appropriating the three hundred thousand dollars therein named, for the use and benefit, or passing such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be, and it is hereby, declared to be the unanimous consent of the Chickasaw legislature, that the United States shall keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes, and the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States

remove the said negroes beyond the limits of the Chickasaw Nation, according to the requirements of the third article of the treaty of April 28, 1866."

The law of October 22, 1885, provided, inter alia, as follows:

"SECTION 1. Be it enacted by the legislature of the Chickasaw Nation, That the Chickasaw people hereby refuse to accept or adopt
8 the freedmen as citizens of the Cherokee Nation upon any terms or conditions whatever, and respectfully request the governor of our nation to notify the Department at Washington of the action of the legislature in the premises.

"SEC. 2. Be it further enacted, That the governor is hereby authorized and directed to appoint two competent and discreet men, of good judgment and business qualifications, to visit Washington City, D. C., during the next session of Congress, and memorialize that body to provide a means of removal of the freedmen from the Chickasaw Nation to the country known as Ok la ho ma, in the Indian Territory, or to make some suitable disposition of the freedmen question, so that they be not forced upon us as equal citizens of the Chickasaw Nation."

The resolution of October 4, 1887, provided, inter alia, as follows:

"And whereas the Chickasaw people have kindly and friendly feeling toward the freedmen, their former slaves, and wishing them to receive full valuation of the places they live upon for their support, as provided for in section 4 of the treaty of 1866, do hereby agree that they shall have two years from the passage of this act to sell their improvements in the Chickasaw Nation to the best advantage, that no loss may accrue to them: Therefore,

"Be it resolved by the legislature of the Chickasaw Nation, That the nation shall refund to the United States the sum of $55,000, to be used in removing the freedmen in the Chickasaw Nation to their new
9 home, as provided under the third and fourth articles of the treaty of 1866, made between the United States and the Choctaw and Chickasaw nations of Indians. (See Sen. Ex. Doc. 166, Fiftieth Congress, first session.)"

4. The act of Congress of August 15, 1894, section 18 (28 Stats., 336), provides as follows:

"That the approval of Congress is hereby given to 'An act to adopt the negroes of the Chickasaw Nation,' and so forth, passed by the legislature of the Chickasaw Nation and approved by the governor thereof January 10, 1873, particularly as set forth in a letter from the Secretary of the Interior transmitting to Congress a copy of the aforesaid act contained in House Executive Document Numbered Two hundred and seven, Forty-second Congress, third session."

5. The agreement between the United States and the Choctaw and Chickasaw tribes of Indians, dated April 23, 1897, and ratified and confirmed by the act of June 28, 1898, section 29 (30 Stats., 505), provides, inter alia, as follows:

"That all the lands within the Indian Territory belonging to the Choctaw and Chickasaw Indians shall be allotted to the members of said tribes, so as to give to each member of these tribes, so far as possible, a fair and equal share thereof, considering the character and fertility of the soil and the location and value of the lands.

"The lands allotted to the Choctaw and Chickasaw freedmen
10 are to be deducted from the portion to be allotted under this agreement to the members of the Choctaw and Chickasaw tribe, so as to reduce the allotment to the Choctaws and Chickasaws by the value of the same.

"That the said Choctaw and Chickasaw freedmen who may be entitled to allotments of 40 acres each shall be entitled each to land equal in value to 40 acres of the average land of the two nations."

6. The agreement between the United States and the Choctaw and Chickasaw nations, made the 21st day of March, 1902, ratified and confirmed by the act of July 1, 1902, chapter 1362, provides as follows:

"11. There shall be allotted to each member of the Choctaw and Chickasaw tribes, as soon as practicable after the approval by the Secretary of the Interior of his enrollment, as herein provided, land equal in value to three hundred and twenty acres of the average allottable land of the Choctaw and Chickasaw nations, and to each Choctaw and Chickasaw freedman, as soon as practicable after the approval by the Secretary of the Interior of his enrollment, land equal in value to forty acres of the average allottable land of the Choctaw and Chickasaw nations, to conform, as nearly as may be, to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements. For the purpose of making allottments and design'ing
homesteads hereunder, the forty-acre or quarter-quarter subdivi-
11 sions established by the Government survey may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.

"13. The allotment of each Choctaw and Chickasaw freedman shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate or allotment.

"15. Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under this act, nor shall said lands be sold except as herein provided."

7. The same agreement provides as follows:

"36. Authority is hereby conferred upon the Court of Claims to determine the existing controversy respecting the relations of the Chickasaw freedmen to the Chickasaw Nation and the rights of such freedmen in the lands of the Choctaw and Chickasaw nations under the third article of the treaty of eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw nations, and under any and all laws subsequently enacted by the Chickasaw legislature or by Congress.

"37. To that end the Attorney-General of the United States is hereby directed, on behalf of the United States, to file in said Court of Claims within sixty days after this agreement becomes effective, a bill of interpleader against the Choctaw and Chickasaw nations and the
12 Chickasaw freedmen, setting forth the existing controversy between the Chickasaw Nation and the Chickasaw freedmen, and praying that the defendants thereto be required to interplead and settle their respective rights in such suit.

"38. Service of process in the suit may be had on the Choctaw and Chickasaw nations, respectively, by serving upon the principal chief of the former and the governor of the latter a certified copy of the bill, with a notice of the time for answering the same, which shall not be less than thirty nor more than sixty days after such service, and may be had upon the Chickasaw freedmen by serving upon each of three known and recognized Chickasaw freedmen a certified copy of the bill, with a like notice of the time for answering the same, and by publishing a notice of the commencement of the suit, setting forth the nature and prayer of the bill, and the time for answering the same, for a period of three weeks, in at least two weekly newspapers having general circulation in the Chickasaw Nation.

"39. The Choctaw and Chickasaw nations, respectively, may in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes, employ counsel to represent them in such suit and protect their interests therein; and the Secretary of the Interior shall employ competent counsel to represent the Chickasaw freedmen in said suit and to protect their interests therein; and the compensation of counsel so employed for the
13 Chickasaw freedmen, including all costs of printing their briefs and other incidental expenses on their part not exceeding six thousand dollars, shall be paid out of the Treasury of the United States upon certificate of the Secretary of the Interior setting forth the employment and the terms thereof, and stating that the required services have been duly rendered; and any party feeling aggrieved at the decree of the Court of Claims, or any part thereof, may, within sixty days after the rendition thereof, appeal to the Supreme Court; and in each of said courts the suit shall be advanced for hearing and decision at the earliest practicable time.

"73. This agreement shall be binding upon the United States and the Choctaw and Chickasaw nations and all Choctaws and Chickasaws, when ratified by Congress and by a majority of the whole number of votes cast by the legal voters of the Choctaw and Chickasaw tribes in the manner following: The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall, within one hundred and twenty days after the ratification of this agreement by Congress, make public proclamation that the same shall be voted upon at any special election to be held for that purpose within thirty days thereafter, on a certain day therein named; and all male citizens of each of the said tribes qualified to vote under the tribal laws shall have a right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not. And if this agreement be ratified by said
14 tribes as aforesaid, the date upon which said election is held shall be deemed to be the date of final ratification.

"74. The votes cast in both the Choctaw and Chickasaw nations shall be forthwith returned and duly certified by the precinct officers to the national secretaries of said tribes, and shall be presented by said national secretaries to a board of commissioners consisting of the principal chief and the national secretary of the Choctaw Nation and the governor and national secretary of the Chickasaw Nation and two members of the commission to the Five Civilized Tribes; and said board shall meet without

delay at Atoka, Indian Territory, and canvass and count said votes, and make proclamation of the result."

8. The said agreement between the United States and the Choctaws and Chickasaws having been ratified and confirmed by the act of July 1, 1902, as aforesaid, and having been ratified in accordance with the provisions of paragraphs 73 and 74 of said agreement, by elections held on September 25, 1902, became effective on that date.

Wherefore, the Attorney-General prays your honorable court:

1. That the defendants may answer the premises, and that the defendants, to wit, the Choctaw and Chickasaw nations on the one part, and the Chickasaw freedmen on the other part, may be decreed to interplead and settle and determine between themselves the existing controversy respecting the relations of the Chickasaw freedmen and the Chickasaw
15 Nation, and the rights of such freedmen in the land of the Choctaw and Chickasaw nations under the third article of the treaty of April 28, 1866, between the United States and the Choctaw and Chickasaw nations, and under any and all laws subsequently enacted by the Chickasaw legislature or by Congress.

2. Such other and further relief as the nature of the case may require.

P. C. KNOX,
Attorney-General.

17 THE UNITED STATES, COMPLAINANT,
vs.
THE CHOCTAW NATION AND THE CHICKASAW NATION and the Chickasaw Freedmen, defendants. } No. 23115.

II. *Answer of the Choctaw and Chickasaw Nations.*

(Filed January 26, 1903.)

To the Honorable the Judges of the Court of Claims:

Come now the Choctaw Nation and the Chickasaw Nation, and, answering the bill of interpleader herein, respectfully show:

I.

That the members of the Choctaw Nation or tribe of Indians and the members of the Chickasaw Nation or tribe of Indians are the owners of the lands embraced within the limits of the Choctaw Nation and the Chickasaw Nation, more particularly described in the treaty
18 between the Choctaw and Chickasaw nations or tribes of Indians and the United States of America, entered into on the twenty-second day of June, eighteen hundred and fifty-five, as follows, to wit:

ARTICLE I.

"The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz: Beginning at a point on th Arkansas River, one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river and running thence due south to Red River; thence up Red River to the

point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning.

"And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal, undivided interest in the whole: Provided, however, no part thereof shall ever be sold without the consent of both tribes; and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

II.

The defendants, the Choctaw and Chickasaw nations or tribes of Indians, admit that for a number of years prior to the year eighteen hundred and sixty-six there resided within the territory of the Chickasaw Nation a number of persons of African descent who were held in slavery in said nation.

III.

Said nations admit that the treaty between the United States
19 and the Choctaw and Chickasaw nations, concluded April twenty-eighth, eighteen hundred and sixty-six, and proclaimed July tenth, eighteen hundred and sixty-six, provided, inter alia, as follows:

"ARTICLE II.

"The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in punishment of crime, whereof the parties shall have been duly convicted in accordance with the laws applicable to all members of the particular nation, shall ever exist in said nations.

"ARTICLE III.

"The Choctaws and Chickasaws, in consideration of the sum of $300,000.00, hereby cede to the United States the territory west of the 98th degree, west longitude, known as the Leased District, provided that the said sum shall be invested and held by the United States at an interest not less than five per cent, in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the nations at the date of the treaty of Fort Smith, and their descendants heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants forty acres each of the land of said

nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations the said sum of $300,000 shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as, within ninety days after the passage of such laws, rules, and regulations, shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said Territory in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

"ARTICLE IV.

"The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil or criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce. And they agree, on the part of their respective nations, that all laws shall be equal in their operation upon Choctaws, Chickasaws, and negroes, and that no distinction affecting the latter shall at any time be made, and that they shall be treated with kindness and be protected against injury; and they further agree, that while the said freedmen, now in the Choctaw and Chickasaw nations, remain in said nations respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupants, it being understood that in the event of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in place of the land cultivated as last aforesaid."

IV.

The defendants, The Choctaw and Chickasaw Nations or Tribes of Indians, state that the Chickasaw legislature had no power to take any action which would bind these defendants in regard to said Chickasaw freedmen after July tenth, eighteen hundred and sixty-eight, under the

provisions of the said article three of the treaty of eighteen hundred and sixty-six, and that the only legislative action taken by the legislature of the Chickasaw Nation before the expiration of the two years from July tenth, eighteen hundred and sixty-six, the date of the treaty, was as follows:

On November ninth, eighteen hundred and sixty-six, the Chickasaw legislature passed an act which contained the following:

"SECTION 1. Be it enacted by the legislature of the Chickasaw Nation, That whereas a treaty was concluded at Washington city on the 28th of April, 1866, by commissioners duly appointed on the part of the Chickasaws, Choctaws, and the United States Government, which said treaty was ratified with amendments by the United States Senate and confirmed by the President, the Chickasaw legislature does hereby consent and confirm the said treaty and amendments made by the Senate of the United States.

"SECTION 2. * * *

"SECTION 3. Be it further enacted, That the provisions contained in article 3d, of the said treaty, giving the Chickasaw legislature the choice of receiving and appropriating the three hundred thousand dollars named for the use and benefit of the Chickasaws, or passing such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be, and is hereby declared to be the unanimous consent of the Chickasaw legislature; that the United States shall keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes. And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Govern-
22 ment of the United States remove the said negroes beyond the limits of the Chickasaw Nation, according to the requirements of the 3d article of the treaty of April 28th, 1866."

On the twenty-third day of July, eighteen hundred and sixty-eight, the Secretary of the Interior addressed to the President pro tempore of the United States Senate an official communication, which contained the following paragraph:

"Two years from the ratification of the treaty having expired, and the legislatures of the Choctaw and Chickasaw nations having failed to make such laws, rules, and regulations in regard to said persons of African descent resident in said nations at the date of the treaty of April 28, 1866, it becomes the duty of the United States, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove."

The defendants, The Choctaw and Chickasaw Nations or Tribes of Indians, admit the enactment by the legislature of the Chickasaw Nation of the act of January tenth, eighteen hundred and seventy-three, as set forth in the bill of interpleader of the complainant, and that the same was submitted by the governor of the Chickasaw Nation, by letter of the same date, to the President of the United States, and that the same was submitted by the Secretary of the Interior to the Speaker of the House of Representatives on February tenth, eighteen hundred and seventy-three, with a recommendation for appropriate legislation, as stated in said bill; but said defendants say that the Chickasaw legislature had no power to affect the status of said freedmen by said act, and that no action

was had thereon by the United States of America at that time, and the defendants state that no action was ever had thereon by the United States of America until August fifteenth, eighteen hundred and ninety-four, when Congress gave its approval to said act of the Chickasaw legislature of January tenth, eighteen hundred and seventy-three,
23 and that before the passage of said act of Congress said act of January tenth, eighteen hundred and seventy-three, had been repealed by the Chickasaw legislature, as will appear from the following acts and proceedings had from time to time:

On the ninth day of November, eighteen hundred and seventy, the governor of the Chickasaw Nation, in pursuance of the action of the legislature of the Chickasaw Nation, issued the following proclamation:

"Whereas it having become necessary, under the treaty of April 28th, 1866, that the freedmen were put upon the same footing with the other citizens of the United States, I, William P. Brown, governor of the Chickasaw Nation, do this day issue this, my proclamation, requiring all freedmen who are living within the limits of the Chickasaw Nation to obtain 'permits,' as is required by the laws of the Chickasaw Nation (of the citizens of the United States) by the 1st day of January, A. D. 1871.

"Given under my hand and seal of office this the 9th day of November, A. D. 1870.

"WM. P. BROWN,
"*Governor Chickasaw Nation.*"

On October eighteenth, eighteen hundred and seventy-six, the legislature of the Chickasaw Nation passed a resolution as follows:

"Whereas the governor of the Chickasaw Nation has recommended to this legislature that commissioners be sent, on the part of the Chickasaw Nation, to confer with commissioners on the part of the Choctaw Nation in relation to the freedmen in said nations and agree with the Choctaws upon some plan for the final settlement of all questions relating to all freedmen;

"And whereas it is understood that the governor is in favor of the removal of all freedmen, former slaves of the Choctaws and Chickasaws, from the limits of the Choctaw and Chickasaw country, is of the opinion that the same may be accomplished; therefore,

"SECTION 1. Be it resolved by the legislature of the Chickasaw
24 Nation, that four commissioners, one from each county of the Chickasaw Nation, shall be elected by joint vote of the senate and house of representatives of the present session of the legislature to visit the capital of the Choctaw Nation during the next regular session of the general council of said nation, with instructions to confer with the commissioners on the part of the Choctaw Nation and agree upon some plan whereby the freedmen, former slaves of the Choctaws and Chickasaws and their descendants, shall be removed from and kept out of the limits of the Choctaw and Chickasaw country.

"SEC. 2. * * *"

On October seventeenth, eighteen hundred and seventy-seven, the legislature of the Chickasaw Nation passed an act, which was duly approved, as follows:

"SEC. 1. * * *

"SEC. 2. * * *

"SEC. 3. Be it further enacted that the provisions contained in said article 3 of the treaty giving the Chickasaw legislature the choice of receiving and appropriating the three hundred thousand dollars therein named for the use and benefit of passing such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be, and it is hereby declared to be, the unanimous consent of the Chickasaw legislature that the United States shall keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes, and the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States remove the said negroes beyond the limits of the Chickasaw Nation according to the requirements of the third article of the treaty of April 28, 1866."

On May sixth, eighteen hundred and eighty-two, the legislature of the Chickasaw Nation passed an act, which was duly approved, as follows:

"SECTION 1. Be it enacted by the legislature of the Chickasaw Nation, that Wm. L. Byrd and B. F. Overton, delegates of the Chickasaw Nation, are hereby fully authorized and directed to enter their protest in behalf of the Chickasaw Nation against the ratifying by Congress of the United States of an act passed by the general council of the Choctaw Nation adopting and granting to the freedmen of the Choctaw Nation full rights of citizenship without conferring with the Chickasaws or obtaining their consent to said adoption; and said delegates are hereby fully authorized and directed to represent the Chickasaw people in any and all measures that might be presented before the Department and Congress of the United States affecting the interests of our people and country.

"SEC. 2. Be it further enacted by the legislature of the Chickasaw Nation, that Wm. L. Byrd and B. F. Overton, Chickasaw delegates to Washington City, D. C., be allowed the sum of fifteen hundred dollars each as full compensation for their services, and this amount shall apply to the money already borrowed by the governor from the treasurer to defray the expenses of the delegates.

"SEC. 3. Be it further resolved, that this act take effect and be in force from and after its passage."

On October twenty-second, eighteen hundred and eighty-five, the legislature of the Chickasaw Nation passed an act, which was duly approved, as follows:

"Whereas the 3d article of the treaty of 1866 between the United States and the Choctaw and Chickasaw nations stipulates that the territory lying west of the 98th degree of west longitude, known as the Leased District, be ceded to the United States Government for three hundred thousand dollars ($300,000.00), the consideration of three hundred thousand dollars, which sum shall be held in trust by the United States for said nations, at a certain rate of interest, until each respective nation elects within two years after the ratification of said treaty to make certain laws, rules, and regulations giving the freedmen once held as slaves by said nation the rights, privileges, and immunities of citizens of said nations, except in their annuities and public domain, etc.;

"And whereas it provides, further, that if said laws, rules, and regu-

27328

lations are not made within two years, by said nations, from the
26 ratification of aforesaid treaty, then the United States Government promises to remove, within 90 days from the expiration of the two years, such of said freedmen as are willing to remove from said nations, using the aforesaid three hundred thousand dollars for the use and benefit of said freedmen in their removal, etc., and those choosing to remain or might return after removing to receive no part or benefit from the said three hundred thousand dollars, and shall be upon the same footing as other citizens of the United States;

"And whereas the United States has failed to remove said freedmen agreeable to the stipulations of said treaty and left them here among us for a long time, recognized by us as occupying the same status as other citizens;

"And whereas the Chickasaw people, in justice to their posterity, have not made said laws, rules, and regulations as provided for in the aforesaid article of said treaty, for the following reasons, to wit:

"1st. That the Chickasaw people can not see any reason or just cause why they should be required to do more for their freed slaves than the white people have done in the slave-holding States for theirs.

"2nd. That it was by the example and teachings of the white man that we purchased, at enormous prices, their slaves and used their labor, and were forced by the result of their war to liberate our slaves at a great loss and sacrifice on our part, and we do not hold or consider our nations responsible in nowise for their present situation; therefore,

"SECTION 1. Be it enacted by the legislature of the Chickasaw Nation, that the Chickasaw people hereby refuse to accept or adopt the freedmen as citizens of the Chickasaw Nation upon any terms or conditions whatever, and respectfully request the governor of our nation to notify the Department at Washington of the action of the legislature in the premises.

"SEC. 2. * * *
"SEC. 3. * * *
"SEC. 4. * * *
"SEC. 5. * * *"

27 V.

The defendants, the Choctaw and Chickasaw nations or tribes of Indians, further answering the bill of interpleader herein, state that the said Chickasaw freedmen have no rights whatever in the lands of the Choctaw and Chickasaw nations under the third article of the treaty of eighteen hundred and sixty-six, between the United States and the Choctaw and Chickasaw nations, or under any and all laws subsequently enacted by the Chickasaw legislature or by Congress, and that the complainant, the United States of America, is indebted to the defendants, the Choctaw and Chickasaw nations, for the full value of all lands which may be allotted to said freedmen under the provisions of the agreement between the United States and the Choctaw and Chickasaw nations, entered into on the twenty-first day of March, nineteen hundred and two, and ratified and confirmed by act of Congress approved July first, nineteen hundred and two, and set forth in said bill of interpleader.

Wherefore these defendants, the Choctaw and Chickasaw nations, pray that a decree shall be rendered in their favor and against the United States of America for the value of the lands allotted to the Chickasaw freedmen, as ascertained by the appraisal thereof made by the Commission to the Five Civilized Tribes for the purpose of allotment, as provided in said agreement.

MANSFIELD, MCMURRAY, AND CORNISH,
Attorneys for The Choctaw Nation and The Chickasaw Nation, Defendants.

A. A. HOEHLING, Jr.,
Of Counsel.

29 THE UNITED STATES, COMPLAINANT,
v.
THE CHOCTAW NATION AND THE CHICKASAW Nation and the Chickasaw Freedmen, defendants. } No. 23115.

III. *The answer of the Chickasaw freedmen, one of the above-named defendants, to the bill of interpleader, and for relief.*

(Filed January 26, 1903.)

1. The Chickasaw freedmen, one of the defendants above-named, appear herein by their counsel, said counsel having been duly appointed to represent them in this cause by the Secretary of the Interior pursuant to a provision in section 39 of an act of Congress "to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," approved July 1, 1902. A certificate of said appointment is filed herewith.

2. These defendants admit the allegations in each of the sections numbered 1 to 8, inclusive, in said bill of interpleader; and, having thus answered, beg leave of the court to set forth herein their claims and rights to citizenship and property and to pray for alternative relief, with like effect as though the same were set up in an original or cross bill.

30 3. By treaty of October 20, 1832, the Chickasaw Indians ceded to the United States, for the purposes of sale, their country east of the Mississippi River, and about two years later were permitted by the United States to leave their country and migrate west of the Mississippi River. By the treaty between the Choctaw and Chickasaw tribes of Indians of June 17, 1837, the Chickasaw tribe was permitted to occupy, in common with the Choctaw Nation, certain territory within the United States, and by a treaty between said Indian tribes and the United States, dated June 22, 1855, such occupation by said tribes was confirmed. The land so occupied in common is described as follows, to wit: "Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to

its junction with the Arkansas River; thence down said river to the place of beginning."

4. The United States, by said treaty last mentioned, guaranteed the lands thus described "to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal, undivided interest in the whole: Provided, however, no part thereof shall ever be sold without the consent of both tribes, and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

5. By said treaty it was also further provided that said "Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west
31 longitude for the permanent settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein; * * * Provided, however, The territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore." This district is commonly known, and is hereinafter referred to, as the "leased district."

6. The Choctaws and Chickasaws are separate nations, the Chickasaw Nation having a written constitution, a legislative body, judicial and executive officers; but they are dependent nations, subject to the general jurisdiction, authority, and sovereignty of the United States. Pursuant to said treaties and the laws of the United States it became and was the duty of said Choctaw and Chickasaw nations to observe peaceful and friendly relations with the United States and to recognize the general urisdiction, authority, and sovereignty of the United States over said territory, subject only to the right of said Indian nations to occupy said described territory and to govern and control their internal affairs according to their own customs and laws. Any allotment of said lands in severalty among the members of said Indian nations, and the rights of members to such allotments when made, and the rights of either of said nations, or any member thereof, or of any person to any moneys held by the United States for said nations, are matters under the general jurisdiction and authority of the United States, and no allotment in said lands or rights to such funds can be determined by said nations independently.

7. Prior to the outbreak of the civil war in 1861, slavery existed in said Indian nations, and certain people of African descent were held in involuntary servitude by said Indians. Upon the breaking out of the civil war aforesaid, and the organization of the slave States into what is commonly known as the Confederacy, the said Choctaw and Chickasaw nations, disregarding their treaty relations with the United States
32 as dependent nations, joined the said Confederacy by entering into treaty relations with the same, and took up arms against the United States.

8. On the 22d day of September, 1862, the President of the United States issued a proclamation containing, among other things, the following, to wit: "That on the 1st day of January, 1863, all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free." By proclamation of January 1, 1863, the

President, as Commander in Chief of the Army, etc., and "as a fit and necessary war measure for suppressing said rebellion," declared all persons held as slaves within certain States, and designated parts of States, free. The thirteenth amendment to the Constitution of the United States, in force December 18, 1865, provides that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." By this provision of the Constitution, the act of emancipating all slaves within the territory and jurisdiction of the United States was complete, and by virtue thereof all persons held in involuntary servitude, except as a punishment for crime, etc., by any dependent State or nation within the territory of the United States, became and were free; and these defendants allege that all slaves held by the Choctaw and Chickasaw nations became entitled to all the rights of free men in the United States upon the adoption of said thirteenth amendment.

9. Said freedmen, to the number of about 9,066, according to the returns of the Twelfth Census of the United States, are the survivors and the descendants of the slaves held by the Chickasaw Nation, one of the defendants above named.

33 10. In addition to the Choctaw and Chickasaw nations of Indians, who joined said Confederacy, the Creeks, Cherokees, and Seminoles rebelled against the United States, and by a treaty entered into at Fort Smith, Arkansas, on the 10th day of September, 1865, between Commissioners designated by the President of the United States and persons representing the Choctaw and Chickasaw nations and the other three nations comprising what is known as the Five Civilized Tribes, it is recited and agreed as follows, to wit: "Whereas the aforesaid nations and tribes, or bands of Indians, or portions thereof, were induced by the machinations of the emissaries of the so-called Confederate States to throw off their allegiance to the Government of the United States, and to enter into treaty stipulations with said so-called Confederate States, whereby they have made themselves liable to a forfeiture of all rights of every kind, character, and description, which had been promised and guaranteed to them by the United States; and whereas the Government of the United States has maintained its supremacy and authority within its limits; and whereas it is the desire of the Government to act with magnanimity with all parties deserving its clemency, and to reestablish order and legitimate authority among the Indian tribes; and whereas the undersigned, representatives of parties connected with said nations and tribes of Indians, have become satisfied that it is for the general good of the people to reunite with, and be restored to, the relations which formerly existed between them and the United States, and as indicative of our personal feelings in the premises, and of our several nations and tribes, so far as we are authorized and empowered to speak for them; and whereas questions have arisen as to the status of the nations, tribes, and bands that have made treaties with the enemies of the United States, which are now being discussed, and our relations settled by treaty with the United States commissioners now at Fort Smith for that purpose:

34 "The undersigned do hereby acknowledge themselves to be under the protection of the United States of America, and cove-

nant and agree that hereafter they will in all things recognize the Government of the United States as exercising exclusive jurisdiction over them, and will not enter into any allegiance or conventional arrangement with any State, nation, power, or sovereign whatsoever; that any treaty of alliance for cession of land, or any act heretofore done by them or any of their people, by which they renounce their allegiance to the United States, is hereby revoked, canceled, and repudiated.

"In consideration of the foregoing stipulations made by the members of the respective nations and tribes of Indians present, the United States, through its commissioners, promises that it will reestablish peace and friendship with all the nations and tribes of Indians within the limits of the so-called Indian country; that it will afford ample protection for the security of the persons and property of the respective nations or tribes, and declares its willingness to enter into treaties to arrange and settle all questions relating to, and growing out of, former treaties of said nations with the so-called Confederate States, at this council now convened for that purpose, or at such time in the future as may be appointed."

The representatives of the Choctaw and Chickasaw nations signed the above treaty, and subsequently the said treaty was ratified by the legislature of the Chickasaw Nation.

Thereafter, to wit, on the 28th day of April, 1866, a treaty was entered into between the United States and the Choctaw and Chickasaw nations, which treaty, among other things, provided that "Permanent peace and friendship are hereby established between the United States and said nations," and which treaty recognized the existing freedom of all persons within the territory of said Indian nations; but, desiring to obligate the said nations to observe in the future by their laws and administration the freedom of all persons within their jurisdiction, the United States caused to be inserted in Article II of said treaty the following provision:

35 "The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in punishment of crime whereof the party shall have been duly convicted, in accordance with laws applicable to all members of the particular nation, shall ever exist in said nations."

11. It is further provided in said last-named treaty (Article III) as follows, to wit: "The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98° west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent, in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chicka-

saws and Kansas Indians have made their selections, as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportions of three-fourths to the former and one-fourth to the latter—less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such per-
36 sons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations, shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations."

12. The Choctaw and Chickasaw nations did not, nor did either of them, during the two-year limitation mentioned in said Article III, above quoted, pass any laws, rules, or regulations giving to said freedmen resident in said nations at the date of the treaty of Fort Smith, and their descendants, the rights, privileges, and immunities, including the right of suffrage, nor did they give them each forty acres of land, nor make any provision whatsoever regarding their rights in said nations or to any property belonging to said nations, nor did the United States remove said freedmen from the territory occupied by said nations.

13. By and under the laws of the United States the said Indian nations are independent and self-governing in matters pertaining to the internal affairs of said nations, and have a right to determine who are to
37 be adopted into said nations and become citizens thereof, and upon what terms and conditions such adoption may be effected, and the United States has not at any time undertaken to control or in any manner to direct said Indian nations in the matter of the adoption of persons into the nations, that subject being under the exclusive and independent control of the Indian nations. It has, however, been the policy of the United States to secure by treaty the adoption of the freedmen by the Indian nations which had held them in slavery, so as to secure for said freedmen the opportunities of education and self-support.

14. Prior to 1867, the constitution of the Chickasaw Nation provided, among other things, as follows, to wit: "The legislature shall have the power, by law, to admit, or adopt, any person to citizenship in this nation, except a negro, or descendant of a negro: Provided, however, that such an admission, or adoption, shall not give a right, further than to settle and remain in the nation, and to be subject to its laws. * * * The legislature of this nation shall have no power to pass laws for the emancipation of slaves without the consent of their

owners, nor without paying their owners previous to such emancipation a full equivalent in money for the slaves so emancipated. They shall have the right to pass laws to prevent the owners of slaves to emancipate them, saving the rights of creditors. They shall have full power to pass laws which will oblige the owners of slaves to treat them with humanity—to provide for their necessary food and clothing—to abstain from all injuries to them, extending to life or limb: Provided, also, that laws be passed to prohibit the introduction into this nation of slaves who have committed high crimes in violation of the laws of other countries."

By a new constitution, adopted August 16, 1867, such restrictions upon the legislature were removed and did not thereafter exist,
38 and on, to wit, the 10th day of January, 1873, an act was passed by the Chickasaw legislature, and promulgated in words as follows, to wit:

"SECTION 1. Be it enacted by the legislature of the Chickasaw Nation, that all the negroes belonging to the Chickasaws at the time of the adoption of the treaty of Fort Smith, and living in the Chickasaw Nation at the date thereof, and their descendants, are hereby declared to be adopted in conformity with the third article of the treaty of 1866, between the Choctaws, Chickasaws, and the United States: Provided, however, that the proportional part of the three hundred thousand dollars, specified in the third article of the said treaty, with the accrued interest thereon, shall be paid to the Chickasaw Nation for its sole use and benefit: And provided further, that said adopted negroes of the Chickasaw Nation shall not participate in any part of the said proportional part of the said three hundred thousand dollars, nor be entitled to any benefit from the principal and interest on our invested funds or claims arising therefrom, nor to any part of our common domain, or the profits arising therefrom (except the forty acres per capita provided for in the third article of the treaty of eighteen hundred and sixty-six), nor to any privileges or rights not authorized by treaty stipulations: And provided further, that the said adopted negroes, upon the approval of this act, shall be subject to the jurisdiction and laws of the Chickasaw Nation, and to trial and punishment for offenses against them in every case just as if the said negroes were Chickasaws.

"SECTION 2. And be it further enacted, that this act shall be in full force and effect from and after its approval by the proper authority of the United States; and all laws, or parts of laws, in conflict with this act are hereby repealed."

By an act of the Choctaw Council, approved May 21, 1883, it was enacted, among other things, as follows, to wit: "That all per-
39 sons of African descent resident in the Choctaw Nation at the date of the treaty of Fort Smith, September 13, 1865, and their descendants, formerly held in slavery by the Choctaws or Chickasaws, are hereby declared to be entitled to and invested with all the rights, privileges, and immunities, including the right of suffrage, of citizens of the Choctaw Nation, except in the annuities, moneys, and the public domain of the nation."

Thereafter by an act of Congress, approved August 15, 1894, the act of adoption of the Chickasaw legislature above quoted was approved by the United States in the following words, to wit: "That the approval of

Congress is hereby given to 'An act to adopt the negroes of the Chickasaw Nation,' and so forth, passed by the legislature of the Chickasaw Nation and approved by the governor thereof January tenth, eighteen hundred and seventy-three, particularly set forth in a letter from the Secretary of the Interior transmitting to Congress a copy of the aforesaid act, contained in House Executive Document Numbered Two hundred and seven, Forty-second Congress, third session."

And this defendant alleges that upon the approval of said act of the Chickasaw legislature by the United States said freedmen became and are citizens and members of the Chickasaw Nation by adoption, and entitled to all the rights, privileges, and immunities, including the right of suffrage, of citizens of said Chickasaw Nation, excepting only rights to share in certain property and moneys specified in said act of said legislature. And the said freedmen, upon the approval of said act of said legislature, became and are entitled to have and receive forty acres per capita of the land of said Chickasaw Nation on the same terms as the Chickasaws, to be selected on the survey of said land as provided in the third article of the treaty of 1866.

15. By the agreements between the United States and the Choctaw and Chickasaw nations, dated respectively April 23, 1897, and
40 March 21, 1902, mentioned on pages 9 to 14, inclusive, in the bill of interpleader herein, said freedmen are to receive forty acres per capita of average land of the Choctaw and Chickasaw nations, which land may be selected by each allottee so as to include his improvements, the same to be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate or allotment; and in the event that it shall be finally determined in this suit that said freedmen are not, independently of said agreements, entitled to allotments in the Choctaw and Chickasaw lands this court shall render a decree in favor of said nations according to their respective interests against the United States for the value of the lands so allotted to said freedmen, as ascertained by the appraisal thereof made by the Commission to the Five Civilized Tribes for the purpose of allotment.

16. The Chickasaw freedmen allege that since their emancipation as aforesaid they have resided in the Chickasaw Nation, but that said nation, disregarding the rights of said freedmen as free men and disregarding the laws of the United States, have at all times refused and still do refuse to give said freedmen the rights and privileges accorded to all other free persons in the said Chickasaw Nation—that is to say, said freedmen have always been and now are denied the right to attend the public schools of said nation or to receive any education or instruction in the schools supported by said nation because and solely on account of their color, race, and previous condition of servitude, while said schools are open to all other free persons, whether members of the nation or not.

17. Ever since their adoption, as hereinbefore set forth, said freedmen have been and are refused the rights, privileges, and immunities of citizens of the Chickasaw Nation to which they are entitled under the law. The right of suffrage has been and is refused them upon all occa-
41 sions, when other citizens of the Chickasaw nation are permitted to exercise such privilege, and said freedmen, on account of their

color, race, and previous condition of servitude, are not permitted to hold or exercise the functions and duties of any public office or place of trust in said nation; all of which said rights, and others of a public nature, are unjustly and unlawfully denied to said freedmen.

18. The said Chickasaw Nation unlawfully refuses to allow said freedmen to have and receive by allotment forty acres per capita of the lands of said Choctaw and Chickasaw nations, as provided in said act of adoption and by Article III of the treaty of 1866.

19. And this defendant alleges that, by reason of its refusal to recognize and its denial of the rights of this defendant, above set forth, the Chickasaw Nation ought not to have or receive from the United States any part of the moneys held by the United States under the terms set forth in Article III of the treaty of 1866; but that said moneys and the interest thereon should be held, administered, and paid to this defendant by the United States.

20. By virtue of the provisions in section 36 of said act "to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," approved July 1, 1902, authority is conferred upon this honorable court to determine the existing controversy respecting the relations of the Chickasaw freedmen to the Chickasaw Nation, and the rights of such freedmen in the lands of the Choctaw and Chickasaw nations, and under any and all laws enacted by the Chickasaw legislature or by Congress subsequent to the treaty of 1866, aforesaid.

Wherefore this defendant, by said counsel, prays your honorable court:

1. That the Choctaw and Chickasaw nations, defendants herein, be required to answer this bill.

42 2. That this honorable court determine and by decree declare that by virtue of the said thirteenth amendment to the Constitution of the United States, and upon its adoption, all persons of African descent heretofore held in slavery by the Choctaw and Chickasaw nations became free, and have since been entitled to all the rights, privileges, and immunities of free men within the United States, and that all discrimination against them by said Chickasaw Nation, on account of their color, race, and previous condition of servitude, is and has been unlawful and contrary to the laws of the United States.

3. That by virtue of said act of the legislature of the Chickasaw Nation, in force January 10, 1873, and approved by Congress August 15, 1894, said freedmen of the Chickasaw Nation were adopted, and on the date last aforesaid that said freedmen became citizens and members of the Chickasaw Nation, entitled to all the rights, privileges, and immunities, including the right of suffrage, possessed by members of the Chickasaw Nation, upon the limitations only that they should not share in the proportional part of the Chickasaw Nation in the three hundred thousand dollars specified in Article III of the treaty of 1866, with the accrued interest thereon, nor in any benefit from the principal and interest on the invested funds or claims arising therefrom, or any part of the common domain or profits arising therefrom, excepting forty acres per capita, provided for in the third article of the treaty of 1866, and that said Chickasaw Nation may be directed by this honorable court to permit said freedmen to have and enjoy and exercise said rights and privileges of citizenship, including the right of suffrage, in said Chickasaw Nation.

4. That this honorable court further find and decree that said freedmen are entitled to forty acres of average land per capita of the lands belonging to said Choctaw and Chickasaw nations, as provided
43 in Article III of the treaty of 1866, the same to be allotted to them in accordance with the provision of the treaties and acts of Congress hereinabove referred to.

5. That out of the moneys held by the United States on account of the said leased district there be paid to, or applied for the use of, said freedmen a proper and reasonable amount for the maintenance of schools for their use and education, they having been unjustly and unlawfully deprived of school privileges by said Chickasaw Nation since they became free men.

6. That as alternative relief, in the event that the court shall find that said freedmen are not entitled to the relief above prayed for, said freedmen pray that they may have allotted to them forty acres of the average land per capita of the land of said nations, together with their improvements thereon, in accordance with, and upon the terms specified in, said act of Congress to "ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," approved July 1, 1902.

7. And as further alternative relief, in the event said court shall find that said freedmen were not adopted, that it be decreed that said Chickasaw Nation is not entitled to have and receive their proportionate share of said three hundred thousand dollars held by the United States on account of the leased district, but that said proportionate amount shall be paid to, or applied to the use of, said freedmen by the United States.

8. And that this defendant may have such other and further relief in the premises as to this honorable court shall seem meet and the nature of the case may require.

As in duty bound, this defendant will ever pray, etc.

THE CHICKASAW FREEDMEN,
By CHARLES W. NEEDHAM,
Special Counsel.

45 IV. *Motion of Choctaw and Chickasaw Nations, defendants, to strike out certain parts of the answer of the Chickasaw Freedmen.*

(Filed February 28, 1903.)

Come now the Choctaw Nation and the Chickasaw Nation, impleaded herein as parties defendant, by their attorneys of record, and move the court to strike out paragraph 16 of the answer filed herein on behalf of the Chickasaw Freedmen, as well, also, to strike out paragraph 5 of the prayers contained in said answer, and, for grounds of motion, say:

That the several matters and things therein set forth and contained are not embraced in the subject-matter in respect of which jurisdiction was conferred upon this court, and upon the Supreme Court of the United States on appeal, by virtue of the act of the Congress of the United States approved July 1, 1902, and that said matters and things are immaterial

and irrelevant to the determination of any or either of the questions so embraced in said jurisdictional act.

MANSFIELD, McMURRAY AND CORNISH,
Attorneys for the Choctaw Nation and the Chickasaw Nation.

A. A. HOEHLING, Jr.,
Of Counsel.

WASHINGTON, D. C., *February 27, 1903.*

47 V. *Opinion and decree of the court.*

(Filed April 27, 1903.)

WRIGHT, J., delivered the opinion of the court.

This is a bill of interpleader in equity by the United States, complainant, and the Choctaw and Chickasaw nations and the Chickasaw freedmen, defendants.

For a number of years prior to the year 1866 there resided within the territory of the Chickasaw Nation a number of persons of African descent who were held in slavery in said nation.

The treaty between the United States and the Choctaw and Chickasaw Indians, concluded April 23, 1866, and proclaimed July 10, 1866, provided inter alia as follows:

"ARTICLE II. The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in punishment of crime whereof the parties shall have been duly convicted, in accordance with laws applicable to all members of the particular nation, shall ever exist in said nations.

"ARTICLE III. The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98 west longitude known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent, in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all the persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively; and also to give to such persons who were residents, as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately upon the enactment of such laws,
48 rules, and regulations the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred

to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations, respectively. And should said laws, rules, and regulations not be made by the legislatures of the said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said Territory in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations."

The legislature of the Chickasaw Nation has taken action at various times in regard to the said Chickasaw freedmen, as follows:

On November 9, 1866, the Chickasaw legislature passed an act declaring it to be the unanimous desire of the legislature that the United States hold the share of the Chickasaw Nation in the $300,000 stipulated for the cession of the "Leased district" for the benefit of the Chickasaw freedmen and remove them beyond the limits of the Chickasaw Nation, according to the third article of the treaty of 1866.

In 1868 similar action was taken by the Chickasaw legislature asking for the removal, by the United States, of the Chickasaw freedmen from the Chickasaw country.

The act of January 10, 1873, provided as follows:

"SECTION 1. Be it enacted by the legislature of the Chickasaw Nation, That all the negroes belonging to the Chickasaws at the time of the adoption of the treaty of Fort Smith, and living in the Chickasaw Nation at the date thereof, and their descendants, are hereby declared to be adopted in conformity with the third article of the treaty of 1866, between the Choctaws, Chickasaws, and the United States: Provided, however, That the proportional part of the three hundred thousand dollars, specified in the third article of the said treaty, with the accrued interest thereon, shall be paid to the Chickasaw Nation for its sole use and benefit: And provided further, The said adopted negroes of the Chickasaw Nation shall not participate in any part of the said proportional part of the said three hundred thousand dollars, nor be entitled to any benefit from the principal and interest on our invested funds or claims arising therefrom, nor to any part of our common domain, or the profits arising therefrom (except the forty acres per capita provided for in the third article of the treaty of eighteen hundred and sixty-six), nor to any privileges or rights not authorized by treaty stipulations: And provided further, That the said adopted negroes, upon the approval of this act, shall be subject to the jurisdiction and laws of the Chick-
49 asaw Nation, and to trial and punishment for offenses against them in every case just as if the said negroes were Chickasaws.

"SEC. 2. And be it further enacted, That this act shall be in full force and effect from and after its approval by the proper authority of the

United States; and all laws or parts of laws in conflict with this act are hereby repealed."

That act was transmitted by the governor of the Chickasaw Nation, by letter of the same date, to the President of the United States, and was submitted by the Secretary of the Interior to the Speaker of the House of Representatives on February 10, 1873, with recommendation for appropriate legislation for extending the time for the execution of the third article of the treaty. The papers were referred to the Committee on Freedmen Affairs, but no action thereon was had at that time.

The act approved October 18 provided, inter alia, as follows:

"SECTION 1. Be it resolved by the legislature of the Chickasaw Nation, That four commissioners, one from each county of the Chickasaw Nation, shall be elected by joint vote of the senate and house of representatives of the present session of the legislature to visit the capital of the Choctaw Nation, during the next regular session of the general council of said nation, with instructions to confer with commissioners on the part of the Choctaw Nation and agree upon some plan whereby the freedmen, former slaves of the Choctaws and Chickasaws, and their descendants shall be removed from and kept out of the limits of the Choctaw and Chickasaw country."

The act approved October 17, 1876 or 1877, provided, inter alia, as follows:

"SEC. 3. Be it further enacted, That the provisions contained in article 3 of the said treaty, giving the Chickasaw legislature the choice of receiving and appropriating the three hundred thousand dollars therein named for the use and benefit, or passing such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be, and it is hereby, declared to be the unanimous consent of the Chickasaw legislature that the United States shall keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes, and the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States remove the said negroes beyond the limits of the Chickasaw Nation, according to the requirements of the third article of the treaty of April 28, 1866."

The act of October 22, 1885, provided, inter alia, as follows:

"SECTION 1. Be it enacted by the legislature of the Chickasaw Nation, That the Chickasaw people hereby refuse to accept or adopt the freedmen as citizens of the Cherokee Nation upon any terms or conditions whatever, and respectfully request the governor of our nation to notify the Department at Washington of the action of the legislature in the premises.

"SEC. 2. Be it further enacted, That the governor is hereby authorized and directed to appoint two competent and discreet men of good judgment and business qualifications to visit Washington City, D. C., during the next session of Congress and memorialize that body to provide a means of removal of the freedmen from the Chickasaw Nation to the country known as Ok la ho ma, in the Indian Territory, or to make some suitable disposition of the freedmen question, so that they be not forced upon us as equal citizens of the Chickasaw Nation."

The resolution of October 4, 1887, provided, inter alia, as follows:

"And whereas the Chickasaw people have kindly and friendly feeling

toward the freedmen, their former slaves, and wishing them to receive full valuation of the places they live upon for their support, as provided for in section 4 of the treaty of 1866, do hereby agree that they shall have two years from the passage of this act to sell their improvements in the Chickasaw Nation to the best advantage, that no loss may accrue to them: Therefore,

"Be it resolved by the legislature of the Chickasaw Nation, That the nation shall refund to the United States the sum of $55,000, to be used in removing the freedmen in the Chickasaw Nation to their new home, as provided under the third and fourth articles of the treaty of 1866, made between the United States and the Choctaw and Chickasaw nations of Indians." (See Sen. Ex. Doc. 166, Fiftieth Congress, first session.)

The act of Congress of August 15, 1894, section 18 (28 Stats., 336), provides as follows:

"That the approval of Congress is hereby given to 'An act to adopt the negroes of the Chickasaw Nation,' and so forth, passed by the legislature of the Chickasaw Nation and approved by the governor thereof January 10, 1873, particularly as set forth in a letter from the Secretary of the Interior transmitting to Congress a copy of the aforesaid act contained in House Executive Document Numbered Two hundred and seven, Forty-second Congress, third session."

The agreement between the United States and the Choctaw and Chickasaw tribes of Indians, dated April 23, 1897, and ratified and confirmed by the act of June 28, 1898, section 29 (30 Stats., 505), provides, inter alia, as follows:

"That all the lands within the Indian Territory belonging to the Choctaw and Chickasaw Indians shall be allotted to the members of said tribes, so as to give to each member of these tribes, so far as possible, a fair and equal share thereof, considering the character and fertility of the soil and the location and value of the lands.

"The lands allotted to the Choctaw and Chickasaw freedmen are to be deducted from the portion to be allotted under this agreement to the members of the Choctaw and Chickasaw tribe so as to reduce the allotment to the Choctaws and Chickasaws by the value of the same.

"That the said Choctaw and Chickasaw freedmen who may be entitled to allotments of 40 acres each shall be entitled each to land equal in value to 40 acres of the average land of the two nations."

These provisions relative to the freedmen are previously qualified as to their holdings of such lands by this clause in the statute, "to be selected, held, and used by them until their rights under said treaty shall be determined, in such manner as shall hereafter be provided by act of Congress."

The agreement between the United States and the Choctaw and
51 Chickasaw nations, made the 21st day of March, 1902, ratified and confirmed by the act of July 1, 1902, chapter 1362, provides as follows:

"11. There shall be allotted to each member of the Choctaw and Chickasaw tribes, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to three hundred and twenty acres of the average allottable land of the Choctaw and Chickasaw nations, and to each Choctaw and Chickasaw freedman, as soon as practicable after the approval by the

Secretary of the Interior of his enrollment, land equal in value to forty acres of the average allottable land of the Choctaw and Chickasaw nations, to conform, as nearly as may be, to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements. For the purpose of making allotments and designing homesteads hereunder, the forty-acre or quarter-quarter subdivisions established by the Government survey may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.

"13. The allotment of each Choctaw and Chickasaw freedman shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate or allotment.

"15. Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under this act, nor shall said lands be sold except as herein provided."

The same agreement provides as follows:

"36. Authority is hereby conferred upon the Court of Claims to determine the existing controversy respecting the relations of the Chickasaw freedmen to the Chickasaw Nation and the rights of such freedmen in the lands of the Choctaw and Chickasaw nations under the third article of the treaty of eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw nations, and under any and all laws subsequently enacted by the Chickasaw legislature or by Congress.

"37. To that end the Attorney-General of the United States is hereby directed, on behalf of the United States, to file in said Court of Claims, within sixty days after this agreement becomes effective, a bill of interpleader against the Choctaw and Chickasaw nations and the Chickasaw freedmen, setting forth the existing controversy between the Chickasaw Nation and the Chickasaw freedmen, and praying that the defendants thereto be required to interplead and settle their respective rights in such suit."

"SECTION 40. In the meantime the Commission to the Five Civilized Tribes shall make a roll of the Chickasaw freedmen and their descendants, as provided in the Atoka agreement, and shall make allotments to them as provided in this agreement, which said allotments shall be held by the said Chickasaw freedmen, not as temporary allotments, but as final allotments, and in the event that it shall be finally determined in said suit that the Chickasaw freedmen are not, independently of this agreement, entitled to allotments in the Choctaw and Chickasaw lands, the Court of Claims shall render a decree in favor of the Choctaw
52 and Chickasaw nations according to their respective interests, and against the United States, for the value of the lands so allotted to the Chickasaw freedmen as ascertained by the appraisal thereof made by the Commission to the Five Civilized Tribes for the purpose of allotment, which decree shall take the place of the said lands and shall be in full satisfaction of all claims by the Choctaw and Chickasaw nations against the United States or the said freedmen on account of the taking of the said lands for allotment to said freedmen: Provided, That nothing contained in this paragraph shall be construed to affect or change the

existing status or rights of the two tribes as between themselves respecting the lands taken for allotment to freedmen, or the money, if any, recovered as compensation therefor, as aforesaid."

The said agreement between the United States and the Choctaws and Chickasaws was ratified and confirmed by the act of July 1, 1902, as aforesaid, and was ratified in accordance with the provisions of paragraphs 73 and 74 of said agreement, by elections held on September 25, 1902, and was effective on and after that date.

The defendants answered the bill, and the hearing by the court was upon the bill and answers. The facts of the bill having been, in effect, admitted by the answers, no finding of facts appear to be necessary, other than as recited in the decree to be entered herein.

The facts, treaties, and legislation upon which the proceedings are based are shown in the preceding statement, according to the averments of the bill of complaint filed herein, and which the court has found to be true.

It only remains for the court to declare the proper legal conclusions and to state our reasons for the same. By the thirteenth amendment to the Constitution, and from the date of its proclaimed ratification, December 18, 1865, the existence of slavery was impossible within the United States or any place subject to their jurisdiction, and by the force of that instrument the slaves of the Chickasaw Nation became free, and thereafter possessed the same rights incident to all other freedmen relative to life, liberty, and property. These former slaves did not become members of the nation, nor entitled to share in the property held in common by members thereof. The treaty of July 10, 1866, we think, recognized this principle and by its terms provided a means whereby the freedmen might, by consent of the tribe and the voluntary action of the former slaves, become members and be entitled to rights in the property of the nation; namely, first, by the enacting by the nation of laws, rules, and regulations for that purpose, and, second, the acceptance thereof by the freedmen, to be manifested by the act of remaining with the nation ninety days after the adoption of such laws, rules, and regulations; or, alternately stated, by not electing to remove and actually removing from the nation within such ninety days.

The treaty permitted such action on the part of the nation to be made within two years from the ratification of the treaty, which was not done, but later, January 10, 1873, such action was taken, to take effect only after its approval by the proper authority of the United States, and which was properly submitted to Congress for that purpose, and for the further purpose of an extension of time in which to execute the provisions of such treaty. Congress took no action until August 15, 1894,
53 when it approved the act of the Chickasaw Nation to adopt the negroes, but not before the Chickasaw legislature had, in effect, repealed its act of adoption, and thereby, and otherwise, withdrew it from the further consideration of Congress. When Congress professed to act upon the proposition of the Chickasaw Nation to adopt its former slaves there was nothing upon which that act could take effect, for that proposition had been withdrawn, and the act was ineffective and without force. The question of the power of Congress of its own motion to create the freedmen members of the nation is not before us, for Congress did not assume the exercise of such authority.

There is apparent reason to say that by the agreement and act of June 28, 1898 (30 Stat. L., 506), the previous act of Congress, by which the act of adoption was approved, was ratified by the Chickasaw Nation, wherein it is provided that the Commission shall make a correct roll of the freedmen entitled to any rights under the treaty in question, and that 40 acres of land, including their present residences and improvements, shall be allotted to each of them, and such lands so allotted to the freedmen to be deducted, so as to reduce the allotment to the Indians by the value of the same. This allotment to the freedmen is, however, qualified by the further provision that the lands so allotted shall be held and used by the freedmen until their rights under the treaty shall be determined in such manner as shall thereafter be provided by Congress. This provision could not refer to anything but the then existing and now present controversy, and was a direct recognition by Congress of the denial of the rights of the freedmen to the lands then proposed to be allotted to them and an express saving of the rights of the Chickasaw defendant to insist upon its present contention in that respect, and by the act of March, 1902, Congress did provide for the determination of the rights of the freedmen under the treaty, as portended in the act of June 28, 1898. It follows, therefore, that the rights of the parties under article three of the treaty of July 10, 1866, remain unaffected by subsequent legislation, either of the Chickasaw Nation or Congress, and the relations of the Chickasaw freedmen to the Chickasaw Nation and the rights of such freedmen in the lands of the Choctaw and Chickasaw nations under the third article of the treaty in question are to be determined and declared according to its terms.

By that article of the treaty the Indian nations for $300,000 cede to the United States the territory called the leased district, the money to be invested and held by the United States, at interest not less than 5 per cent, in trust for the nations until (1) they shall have made such laws, rules, and regulations as may be necessary to give their former slaves and their descendants the rights, privileges, and immunities of citizens of the nations, except annuities, moneys, and public domain claimed by or belonging to the nations, and (2) to give to each of them 40 acres of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said lands after the Indians have made their selections. Immediately upon such adoption of the freedmen the $300,000 should be paid to the Choctaw and Chickasaw nations in proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of $100 per capita, as shall be sufficient to pay such of the former slaves who, within ninety days after their adoption, shall elect to and actually remove from the nations. Should such adoption not be made by the nations within two years from the ratifi-
54 cation of the treaty, the money shall cease to be held in trust by the Indians, and thereafter be held for the use and benefit of such of the former slaves as shall remove from the territory in such manner as the United States shall deem proper, the latter agreeing within ninety days from the expiration of said two years to remove from the nations all negroes as might be willing to remove, those remaining or returning to have no benefit of the money, but to be upon the same footing as other citizens of the United States in said nations. The provisions of article four of the treaty, set forth in the bill, relative to certain

concessions to the freedmen, in so far as they enlarge the rights of citizens of the United States in the nation, were intended as temporary, to exist only while the provisions of article three remained in fieri.

The Chickasaws have not, as has already been stated, adopted the freedmen into their nation. The negroes have remained in the nation. It does not appear they, or any of them, were willing to remove from the nation, and the United States, not having obligated itself to do so, was under no duty to remove them without their consent. We must presume the freedmen voluntarily remained, and still so remain, in the nations. Their status is, therefore, plainly defined by the treaty itself. Their relation to the Chickasaw Nation is, as the treaty expresses, the same as citizens of the United States in the nation, and, that being true, they have no right or interest, under the terms of the treaty, independently of the agreement of March 21, 1902, in any of the property held in common by the members of the nation. Neither are those of the freedmen who remain within the nation entitled to any part of the funds in the control of the United States.

The decree of the court will be entered in conformity to the views we have expressed, to the effect that the Chickasaw freedmen are not entitled, independently of the agreement of March 21, 1902, to allotments in the lands of the Chickasaw Nation.

DECREE OF THE COURT.

This cause coming on to be heard upon the bill of complaint of the complainant and the several answers of the respective defendants, and the court having heard the arguments of counsel of the respective parties interested herein, and thereafter having taken the said cause under advisement, and upon due consideration thereof, being now fully advised in the premises, and of and concerning the matters in controversy, doth find that the third article of the treaty of July 10, 1866, between the United States and the Choctaw and Chickasaw nations doth and hath remained wholly unaffected by any and all laws subsequently thereto enacted by the Chickasaw legislature or by Congress, independently of the agreement between the United States and the Choctaw and Chickasaw nations made March 2, 1902, ratified and confirmed by Congress July 1, 1902; that the Chickasaw Nation has not made, put in force, or given effect to any laws, rules, or regulations necessary to give all or any persons of African descent, resident in the said nation at the date of the treaty of Fort Smith, and their descendants, theretofore held in slavery in said nation, all or any the rights, privileges, and immunities, including the right of suffrage, of citizens of said nation, nor to give to such persons who were so residents as aforesaid 40 acres each of the land of said nation on the same terms, or otherwise, as the Choctaws and Chickasaws. And the court further finds that the said persons
55 of African descent did not, nor any of them, elect to remove or remove, nor were they or any of them willing to remove from said nation, but they did and do now remain therein; that the United States did not agree to remove the said African persons, nor any of them, save only upon the condition that they were willing to be removed from said nation.

The court further finds that by the said act of electing to and remaining in the said nation the said persons of African descent forfeited all benefit to the money in said third article of said treaty mentioned, and thereafter they became in said nation upon the same footing as other citizens of the United States in said nation, and were entitled only to the rights and privileges of such citizens, and were not entitled to the 40 acres of land mentioned and described in the said third article of the said treaty of July 10, 1866.

It is therefore ordered, adjudged, decreed, and declared by the court that, under and by virtue of the third article of the said treaty of July 10, 1866, independently of the agreement made March 2, 1902, and ratified and confirmed July 1, 1902, the relations of the said Chickasaw Freedmen to the Chickasaw Nation are that of citizens of the United States residing in the said nation, and that the said Chickasaw Freedmen, under the said article of the said treaty, independently of the agreement and act aforesaid of 1902, have no rights in the lands of the Chickasaw Nation, nor are they, or any of them, under said article, entitled to allotments in the lands of the said Chickasaw Nation.

And it is further ordered that upon the coming in of the roll and appraisal to be made by the Dawes Commission, as referred to in the said statute, the defendants, the Choctaw and Chickasaw nations, have leave to apply for an additional decree to be entered at the foot of this decree determining the amount which shall be paid and allowed by the United States to the said Choctaw and Chickasaw nations, as directed by said statute; and that the complainant, the United States, be at the same time heard in regard to such amount for which judgment shall be rendered against the United States.

BY THE COURT.

Filed April 27, 1903.

57 VI. *Application of the United States for and allowance of appeal.*

THE UNITED STATES, COMPLAINANTS,
vs.
THE CHOCTAW NATION AND THE CHICKASAW Nation and The Chickasaw Freedmen, defendants. } No. 23115.

From the decree rendered in the above-entitled cause on the 27th day of April, 1903, the complainants, The United States, by their Attorney-General, on the 1st day of June, 1903, make application for, and give notice of, an appeal to the Supreme Court of the United States.

LOUIS A. PRADT,
Assistant Attorney-General.

Filed June 1, 1903.

JUNE 1, 1903.

Ordered: That the foregoing application for appeal be allowed as prayed for.

BY THE COURT.

59 VII. *Application of the Chickasaw Freedmen for and allowance of appeal.*

THE UNITED STATES, COMPLAINANTS,
vs.
THE CHOCTAW NATION AND THE CHICKASAW Nation and The Chickasaw Freedmen, defendants. } No. 23115.

From the decree entered in the above-entitled cause on the 27th day of April, 1903, the defendant, The Chickasaw Freedmen, by their said attorney, on the 1st day of June, 1903, make application for, and give notice of, an appeal to the Supreme Court of the United States.

CHARLES W. NEEDHAM,
Atty. for the Chickasaw Freedmen.

Filed June 1, 1903.

JUNE 1, 1903.

Ordered: That the foregoing application for appeal be allowed as prayed for.

BY THE COURT.

61 Court of Claims.

THE UNITED STATES, COMPLAINANTS,
v.
THE CHOCTAW NATION AND THE CHICKASAW Nation and The Chickasaw Freedmen, defendants. } No. 23115.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the bill of interpleader of the complainants, of the answers of the defendants, of the opinion and decree of the court, of the application for and allowance of appeal of the United States to the Supreme Court of the United States, and of the application for and allowance of appeal of the Chickasaw Freedmen to the said Supreme Court.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 6th day of June, A. D. 1903.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No. 18973. Court of Claims. Term No. 322. The United States, appellant, *vs.* The Choctaw Nation and The Chickasaw Nation. File No. 18974. Term No. 323. The Chickasaw Freedmen, appellants, vs. The Choctaw Nation and The Chickasaw Nation. Filed June 17", 1903. Office of the clerk Supreme Court U. S. Received Jun. 13, 1903.